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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

Federal Communications Commission
Office of the Secretary

RM-7772

In the matter of

Amendment of Part 74 of
the Commission's Rules and
Regulations with Regard to the
Low Power Television Service

To: The Commission

OPPOSITION TO PETITION FOR RULE MAKING

The Association of Independent Television Stations, Inc. ("INTV"), by its counsel and pursuant to Section 1.405(a) of the Commission's Rules and Regulations, 47 CFR Sec. 1.405(a), hereby submits its Opposition to the Petition for Rule Making ("Petition"), filed June 11, 1991, by the Community Broadcasters Association ("CBA").

The most striking thing about CBA's petition is the mismatch of the alleged problem with the proposed solutions. Whereas CBA properly eschews any grasp for more than secondary status in its petition, the thrust of its proposals thunders over its nominal disavowals of other than secondary status. CBA would have numerous LPTV stations assume the mantle of full-power television stations -- for reasons which simply do not square with the problems such an approach allegedly would

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solve. Indeed, their true colors begin to flutter on the horizon when they state:

Yet a television station is a television station as far as the public is concerned; conventional and LPTV stations alike are tuned in the same way on the same receivers, and the public expects the same standard of performance from both. Moreover, community licensees that invest substantial amounts of money in programming should have the same right to protect their investment that conventional television licensees have.¹

No LPTV licensee ever has invested a cent without a keen appreciation of LPTV's secondary status. The Commission never has held out the slightest hope that LPTV someday would become part of "a unified television broadcasting industry." CBA has offered no reason to begin considering according LPTV stations even the appearance of other than secondary status. Indeed, to transform LPTV to a primary service for allotment purposes would cause devastating spectrum gridlock.

Now is not the time to tamper with the television spectrum, especially in ways which would diminish flexibility. Any such action would hamper implementation of Advanced Television Systems ("ATV"). As the Commission has recognized, a shortage of spectrum already may exist if ATV systems use more than 6 MHz of spectrum.² Now that the Commission has elected to authorize a simulcast system of ATV, whereby

¹Petition at 7. Inasmuch as the Marquette Study reports that LPTV stations reported an average programming cost of \$758.00 per month, the premise of CBA's all too transparent lust to escape secondary status itself may be faulty.

²See Order, RM-5811, Mimeo No. 4074 (released July 17, 1987).

stations will utilize two 6 MHz channels, that potential spectrum shortfall could materialize.³

Further crowding of the television spectrum with LPTV would only compound the shortfall and pose an obstacle to ATV implementation and development. This would hinder the Commission's stated goal of providing a terrestrial broadcast based ATV service to the public.⁴

CBA's specific proposals also lack basis or merit. CBA has proposed that a special class of LPTV stations be created based on the amount of time devoted to locally-produced programming. Stations in this special class would be permitted to secure four or six letter call signs -- just like full power television stations. The word "low" would be removed from their licenses -- just like full power television stations. They would abide by the rules applicable to (one more time!) full power television stations. They no longer would be subject to power limitations, provided they caused no interference to existing service. In essence, in the words of CBA, they would be "treated the same as conventional stations under the Commission's non-engineering rules" and "treated as part of a unified television broadcasting

³*First Report and Order*, MM Docket No. 87-268, FCC 90-295 (released September 21, 1990). Notably, the Commission has decided to obtain spectrum necessary for ATV system implementation from that spectrum presently allocated to television broadcasting.

⁴*Id.*

industry...."⁵

These solutions, however, bear no significant relation to the primary problem faced by LPTV stations, as identified by a survey sponsored by CBA.⁶ The Survey summarizes the primary difficulty faced by LPTV stations as follows:

LPTV continues to be inhibited by inadequate ongoing information about its audiences, and this impediment is a roadblock for many stations in their negotiations for advertising revenues.⁷

As stated in more detail in the body of the survey:

Partly because of the often haphazard and unspecific collection of information about audiences, the sale of advertising is often difficult for the commercial LPTV stations, who must sell time without the advantage of the traditional mechanisms for negotiating prices. This seems to be less of a problem for rural stations, whose markets are more readily identifiable, and whose audiences and local advertisers are therefore more easily isolated from larger market media.⁸

None of CBA's proposed solutions will solve this problem.

First, assuming *arguendo* that permitting LPTVs to use call signs just like those of full power stations would permit better identification of LPTV stations by diary keepers and rating services, the underlying source of the audience reporting problem would remain unresolved. The real difficulty

⁵Petition at i.

⁶Banks, Mark J., Ph.D., and Havice, Michael J., Ed.D., Low Power Television 1990 Industry Survey, Final Report (December 14, 1990), CBA Petition for Rule Making, Exhibit 1 [hereinafter cited as *Survey*].

⁷*Id.*, Summary. (The *Survey* is not paginated. References are to Sections.)

⁸*Id.*, Advertising.

according to CBA and the *Survey* is the disparity between the area served by LPTV stations and the area within which ratings are compiled.⁹ As CBA admits, "An LPTV station rarely will be able to cover an entire ADI, especially in a hyphenated market."¹⁰ The standard ratings measurement area is the Area of Dominant Influence (ADI), comprised of the counties in which stations from a particular community gain the largest share of viewing. Usually, an ADI is an expansive geographic area comprised of numerous counties with thousands of television households. Measurement of viewing in an isolated portion of an ADI necessarily is problematic. In such smaller areas, the size of the sample typically would be insufficient to permit reliable audience estimates. Conforming call letter patterns to ratings service database fields simply would fail utterly to remedy this problem. If the number of diaries is too small, then it matters not whether every entry is perfectly correct. No reliable audience estimates can be made.

Furthermore, the dimensions of the problem caused by five-character alpha numeric call signs hardly is revealed by CBA or the *Survey*. Several factors suggest that it may not be so great. First, diaries are reviewed and viewing credited based on elements other than call letters. Channel number and program title also are recorded. The rating services claim to

⁹Petition at 4-5.

¹⁰Petition at 3, n.2.

use editing procedures which produce reliable dairy review.¹¹ Second, in major markets, meters have replaced diaries as the primary audience measurement device. Meters reflect viewing to channels. Call letters are not considered. Therefore, assigning four or six letter call signs to LPTV stations provides no real solution to the difficulties encountered by LPTV stations in securing reliable audience ratings.¹²

Lifting power limitations also is no solution. CBA seeks only sufficient power to provide community-wide service.¹³ . However, community-wide service will offer no solution to the audience reporting problem. Only ADI-wide service could accomplish that, but ADI-wide service is not remotely feasible technically for LPTV stations. Therefore, abandoning the current power limitations would offer no meaningful solution to the one problem noted in the Survey.

Moreover, increasing power limitations would be the sort of spectrum juggling which the Commission must avoid if ATV is to become a reality.

Treating LPTVs like "full-fledged" television stations

¹¹Diary editing techniques were explained recently by Doug McFarland of Arbitron in *Broadcasting* magazine's "Monday Memo" column. *Broadcasting* (August 26, 1991) at 8.

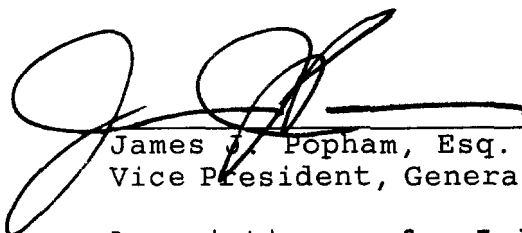
¹²The problems LPTV stations LPTV stations allegedly face is belied to a certain extent by the fact that about 15% of LPTV stations responding in the Marquette Study used Arbitron and 14% have used Nielsen. Marquette Study, Station Audiences.

¹³*Id.* at 6.

for general regulatory purposes also provides no solution to any demonstrable problem. Certainly, such additional regulation of LPTV stations will have no bearing on audience measurement problems.¹⁴

In view of the above, INTV opposes CBA's Petition for Rule Making and urges that it be denied.

Respectfully submitted,



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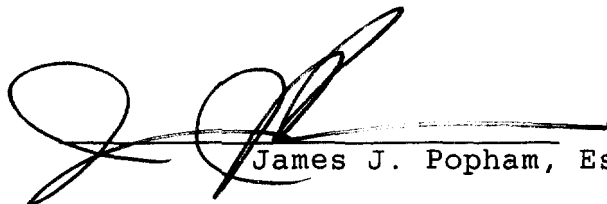
September 12, 1991

¹⁴INTV has no difficulty sympathizing with the theoretical need to accord LPTV stations syndicated exclusivity protection. (Petition at 7, n.9) However, the dimensions of the real breach of exclusivity of LPTV programming is not even suggested by CBA in its petition.

CERTIFICATE OF SERVICE

I, JAMES J. POPHAM, hereby certify that on this 12th day of September, 1991, I have caused to be served by first-class mail, postage prepaid, a copy of the foregoing "Opposition to Petition for Rule Making," addressed to the individual listed below:

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